

In the Matter of C. NELSON MANUFACTURING COMPANY and HARRY
SEMON and WYLIE PARKER, COMPLAINANTS

Case No. C-1006.—Decided October 11, 1939

Refrigerated Ice-cream Cabinet and Soda Fountainette Manufacturing Industry—Labor Organization: alleged social club purporting to act as agency for presentation of employee "views and recommendations on all questions of company policy"—*Interference, Restraint, and Coercion:* interrogation of employees concerning union affiliation and activity; expressed opposition to outside unions; invitation to form an inside union; dissemination of statements intended to discourage union activity; threat to shut down plant if union obtained a substantial membership among respondent's employees; employer ordered to cease such practices; charges of spying on union activities not sustained—*Company-Dominated Unions—Employee Representation Plans:* revival of admittedly company-dominated union coinciding with campaign drive of outside union; direct sponsorship by employer; assistance in formation by supervisory officials; use of plant facilities; activities directed by employer; contrasting hostility of employer to outside union; formation of second plan following strike; activities directed by non-striker who led back-to-work movement; posting of notice of organization meeting on plant bulletin board; attendance of supervisory employees at meetings; respondent ordered to disestablish revived employee representation plan and to refuse to accord recognition to second employee representation plan as agencies for collective bargaining—*Strike:* not result of unfair labor practices—*Discrimination:* discharges of four employees because of their failure to utilize company-dominated employee representation plan for presentation of grievance and engaging in concerted activities; charges of, for union membership or activity, not sustained as to five employees; charges of refusal to reinstate strikers after strike because of union affiliation or activity, not sustained—*Reinstatement Ordered:* discharged employees; preferential list to be maintained for strikers for whom respondent claims no work available—*Back Pay:* awarded: discharged employees—*Complaint:* dismissed without prejudice with respect to two employees in view of nonsubmission of evidence concerning circumstances of their alleged discharges.

Mr. William J. Avrutis, for the Board.

Case, Voyles & Stemmler, by *Mr. Clarence T. Case* and *Mr. David W. Voyles*, of St. Louis, Mo., for the respondent.

Mr. Fred W. Myers, of St. Louis, Mo., for the United Association of Steam, Gas & Refrigeration Fitters, Auxiliary Local No. 562.

Mr. Eugene R. Thorrens, of counsel to the Board.

15 N. L. R. B., No. 117.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by Harry Semon and Wylie Parker, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated May 27, 1938,¹ against C. Nelson Manufacturing Company, St. Louis, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and upon Harry Semon and Wylie Parker.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the respondent had, since about March 1, 1937, dominated and interfered with the formation and administration of Nelson's Protective Association, herein called the N. P. A.; and contributed financial and other support thereto; (2) that the respondent had, since about July 1, 1937, dominated and interfered with the formation and administration of Nelson's Employees' Council, herein called the N. E. C., and contributed financial and other support thereto; (3) that on specified dates the respondent discharged, laid off or severed from its employ nine named employees,² and has since refused to reinstate them, because of their union activities; (4) that the unfair labor practices set forth above,³ and others set forth below, caused a strike about June 12, 1937; (5) that on about June 24, 1937, the respondent failed and refused, and has since failed and refused, to reinstate 22 named employees⁴ who participated in said strike; and (6) that the respondent had by these and other means, including espionage, interrogation of employees concerning union activities, making of anti-union statements and

¹ The notice of hearing attached to the complaint erroneously referred to the date of the complaint as June 27, 1938.

² Ervin Barnes, Elzie Fleeman, Paul Price, Elmer Wuest, Lee Helvey, Henry DuPont, Ernest Barnes, Dennis Elmore, and Gordon Hampton.

³ Except those relating to the N. E. C. and the hire and tenure of Dennis Elmore and Gordon Hampton.

⁴ Walter Winston, Everet Joyce, Wylie Parker, Roy Riggs, Larry Cranwell, Edw. Owens, Otis Faddis, Edgar Pratt, Tony Hammor, Cecil Sumpter, Adam Weston, Nick Studdy, Glennis Elmore, Stanley Tritley, Harry Semon, Harry Elmore, Ernest Barnes, Ault Helvey, Carl Barnes, Cecil Like, Hoyt Like, and Gordon Hampton.

threats, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

On June 9, 1938, the respondent filed an answer, denying the material allegations of the complaint and asserting certain affirmative matter in defense.

Pursuant to the notice of hearing and notice of postponement of hearing duly served upon the above-named persons on whom the complaint was served, a hearing was held at St. Louis, Missouri, on June 9, 10, 11, 13, 14, and 15, 1938, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. The business representative of the United Association of Steam, Gas & Refrigeration Fitters, Auxiliary Local 562, to which some of the respondent's employees belonged, appeared on behalf of that organization. All participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Trial Examiner allowed a motion by counsel for the Board to amend the complaint to allege that seven of the above-mentioned nine⁵ employees, who were alleged to have been discriminatorily discharged or laid off, were so treated for the additional reason that "they had failed to use Nelson's Protective Association as their agent for the purpose of collective bargaining, or to represent them in their relations with the respondent." Pursuant to leave granted by the Trial Examiner, the respondent specifically denied the new matter by amending its answer. The Trial Examiner also granted motions of counsel for the Board to amend the complaint to correct the names of two employees listed therein,⁶ and the motion of counsel for the respondent to allow its answer to stand to the complaint as so amended. Before the close of the Board's case, counsel for the respondent moved to dismiss the complaint as to all persons alleged therein to have been discriminatorily treated with respect to hire or tenure of employment, except three.⁷ The Trial Examiner denied the motion. During the course of the hearing, the Trial Examiner made a number of rulings on other motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. After the close of the hearing, the respondent filed a brief with the Trial Examiner.

⁵ Thus excluding Gordon Hampton and Dennis Elmore.

⁶ These changes were: (1) from Larry Cranwell to A. H. Cranwell, also known as Larry; (2) from Nick Studdy to Jacob Studnicki, also known as Nick Studi.

⁷ The respondent limited its motion to exclude these three persons inasmuch as the Trial Examiner granted the Board's motion to call the three, who had theretofore failed to appear at the hearing, as witnesses later in the proceeding.

Subsequently the Trial Examiner filed his Intermediate Report, dated October 24, 1938, which was duly served upon all parties, finding that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist from its unfair labor practices, disestablish and withdraw all recognition from the N. P. A. as a representative of its employees for the purposes of collective bargaining, offer reinstatement with back pay to 23 employees, and back pay to Katherine Winston as legal representative of Walter Winston, deceased, who died prior to the hearing. The Trial Examiner also found that the respondent had not discouraged membership in a labor organization by discrimination in regard to hire and tenure of employment with respect to Dennis Elmore, and recommended dismissal of the complaint as to him. Stating that the record contained no evidence of the circumstances surrounding the termination of the employment of Lee Helvey and Henry DuPont, the Trial Examiner recommended dismissal of the complaint as to them without prejudice.^{7a} Although he apparently found that the respondent discriminatorily discharged Ernest Barnes, the Trial Examiner recommended that Barnes not be reinstated or awarded back pay inasmuch as he assaulted and beat his foreman to avenge his discharge.

After the service of the Intermediate Report the respondent filed a written motion, accompanied by an affidavit and charts purporting to show, *inter alia*, the volume of the respondent's business and the status of its pay roll from the time of the termination of the hearing to the date of the Intermediate Report, for leave to make such affidavit part of the record. In view of our findings in Section III, D, *infra*, we deem the consideration of the contents of the affidavit and charts unnecessary to the determination of the issues. We, therefore, deny the motion.

The respondent and Ernest Barnes filed exceptions to the Intermediate Report. On June 29, 1939, pursuant to notice duly served upon all parties, oral argument, in which representatives of the respondent and Auxiliary Local 562 participated, was had before the Board in Washington. At the close of the oral argument the respondent filed an additional brief with the Board. The Board has considered the respondent's briefs and has considered all the exceptions to the Intermediate Report and hereby overrules the exceptions of the respondent save as they are consistent with the findings, conclusions, and order set forth below, and finds the exceptions of Ernest Barnes to be without merit.

^{7a} The Union filed no exception to this ruling of the Trial Examiner. We hereby affirm his findings with respect to Lee Helvey and Henry DuPont and, accordingly, we will dismiss the complaint as to them without prejudice.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT⁸

The respondent, C. Nelson Manufacturing Company, a Missouri corporation, having its office and place of business at St. Louis, Missouri, is engaged in the assembly, sale, and distribution of mechanically refrigerated ice-cream cabinets and soda fountainettes. Of an estimated total of 60,000 mechanically refrigerated ice-cream cabinets sold annually by manufacturers in the United States, the respondent manufactures and sells approximately 5,000 units. The principal raw materials used by the respondent in its operations consist of metal sheets, rods and bars, lumber, cork, sponge rubber, paint, and fabricated units and parts, including valves, controls, compressors, refrigerating coils, and electric motors. During the fiscal year beginning October 1, 1936, and ending September 30, 1937, the respondent used metal items having a total value of \$240,139.88, of which \$61,603.40 worth, or over 25 per cent, were obtained outside the State of Missouri. In the same period the respondent used cork valued at \$36,415.42, units, compressors, and parts valued at \$226,364.26, and refrigerating coils valued at \$23,547.87, all of which were obtained from sources outside Missouri. During the same period, the total net sales of the respondent aggregated \$1,143,906.84. Of this amount, the respondent shipped finished products, aggregating \$1,074,458.26, or approximately 94 per cent, to customers located outside Missouri.

II. THE ORGANIZATIONS INVOLVED

United Association of Steam, Gas & Refrigeration Fitters is a labor organization affiliated with the American Federation of Labor. It chartered Local Union No. 562. Auxiliary Local, which is a sub-local of Local Union No. 562, admits to membership employees of the respondent who work as refrigeration craftsmen or service fitters.

Carpenters' District Council, St. Louis, Missouri, is a labor organization composed of delegates from local unions in the St. Louis area, affiliated with the International Brotherhood of Carpenters and Joiners of America, an American Federation of Labor affiliate. The Council assists in organizing workers for its constituent local unions who admit to membership employees of the respondent who work as carpenters.

⁸ The findings in this section are based upon a "Stipulation," dated June 7, 1938, signed by the respondent and introduced in evidence by the Board.

Both of the above labor organizations will be hereinafter jointly referred to as the Union.

Nelson's Protective Association and Nelson's Employees' Council are unaffiliated labor organizations admitting to membership all employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The Union commenced organizational activity among the respondent's employees in March 1937. On March 16, handbills, announcing a union meeting for the workers, were distributed outside the respondent's plant. On the next morning, Superintendent Glennon J. Doyle and the assistant production manager, John Gallagher, assembled the employees into a group when they reported for work and instructed them to wait on the first-floor shipping room of the plant. When a substantial number had assembled, Gallagher sent small squads of employees into an adjoining room where they found Doyle, C. Nelson, the secretary of the respondent, and Foremen J. W. Simpson and Steve Rochele. There the supervisory staff questioned the employees concerning their union affiliation and made anti-union statements. According to Edward Owen, a painter, C. Nelson asked him whether he belonged to any union. Upon receiving a negative reply, Owen quoted Nelson as saying: ". . . [the employees] could stay with the company, go along with the company; . . . [the respondent] wouldn't never allow an outside local to control the plant." Although C. Nelson testified generally to the effect that he never stated that he "wasn't going to tolerate a union in the shop," he did not specifically deny Owen's testimony. We find that C. Nelson made the statements above. Doyle asked Wylie Parker, an employee in the crating department, "where a union ever helped [him] or anyone else."

During that day, March 17, the employees were instructed by the respondent's supervisory personnel, including C. Nelson, Doyle, and L. Bujewski,⁹ a subforeman, to attend a meeting of employees to be held that night in the plant. In his testimony C. Nelson admitted that at the time he issued the call for the respondent's meeting he knew that the Union had scheduled an organizational meeting for the same night. That evening, about 6:30 or 7 o'clock, the night crew, consisting of 9 or 10 employees, were ushered into Doyle's office when they reported for work. According to Hoyt Like, who worked

⁹ Also referred to in the record as Leonard Bridjewski.

on the night shift, Doyle told the night crew that he knew they had attended a union meeting¹⁰ and warned them: “. . . if [you] played ball with [us,] [we] would play ball with [you]; . . . [you] needed [your] jobs and if [you] wouldn't sign up with any union [you] would keep [your] jobs, other than that [we] couldn't guarantee anything . . . if things had gone wrong they would be adjusted as far as wage increases went . . .” Although in his testimony Doyle denied that he had knowledge of the afternoon union meeting, he admitted that he talked to the night-shift members and failed to deny specifically the statements attributed to him by Hoyt Like. Doyle testified that he told the men not to work that night inasmuch as the respondent planned to eliminate the night shift thereafter and instructed them to wait at the plant until the day crew arrived for the meeting which the respondent had arranged. The Trial Examiner who heard the witnesses believed Hoyt Like's testimony. Accordingly, we find that Doyle addressed the night crew in the manner related by Like.

About 8 o'clock that night C. Nelson and Doyle delivered speeches to the approximately 80 employees who assembled in the plant. Beer, paid for by the respondent, was served at the meeting. The evidence is conflicting as to what C. Nelson and Doyle said. Glennis Elmore, who worked as lead man in the all-metal assembly department, testified as to what occurred in the following language:

. . . after the men had assembled, Mr. Charles Nelson . . . called the men's names off and they answered by name, and time check numbers; . . . after this roll call was made, Mr. Nelson . . . outlined the company's founding from his grandfather's time up to the present day, stating that *they had always been able to run their own business; they intended to keep on running their own business, and that no outside union would ever come into their plant . . . he said that his parents could live comfortably the rest of their lives and travel and not have to be worried with the plant . . . that they could shut down if a union would come in . . . they didn't have to run the plant . . .* [Italics supplied.]

According to Edward Owen, C. Nelson “spoke about the Union, didn't want the Union in and never did have one in that plant and they wasn't going to tolerate that; that they would close the place up before they would have it in there . . . and go out on a vacation

¹⁰ Sometime during the first half of March, the night-shift members attended an afternoon meeting which the Union specially scheduled for them.

... he wanted to know about the Union¹¹ we had in the plant and why it died away. He still had the papers; he could get them out and form the Union again." Except for the general denial noted above to the effect that he never stated that "the company would not tolerate an outside union," C. Nelson failed to deny specifically the truth of the above assertions made by Owen and Glennis Elmore. Moreover, in his testimony C. Nelson admitted that, among other things, he told the employees that the respondent

... tried to adhere to the fact that ever since the company was inaugurated, ... the company, being as small as it was, every man would have an equal voice ... *he should never be afraid to speak up for himself* ... that the office door was always open to anybody that ever had anything to bring up, or if the management in any way could help a man that was in a spot ... he was welcome to do so, that he shouldn't feel that he was just part of a machine, but that both me and my father,¹² being the immediate executives, would be more than willing to listen to any man regardless of what his complaint might be, or of any situation that he may find himself in that he couldn't cope with ...; we were faced with ... stiff competition at the time, and that *if there were any immediate grievances that I would like to have them brought forward at this time* rather than be caught in the middle of a stream ... later on in the season ... [Italics supplied.]

Although C. Nelson stated at the hearing that he did not mention the subject of unions at the meeting, witnesses called by the respondent contradicted him. Clethrup Hartwick, a supervisory employee, testified on cross-examination, that "Charlie Nelson said every man had to use their own judgment about any outside union," and that the "question of the outside union was raised because of the passing around of those dodgers." Furthermore, Doyle failed to deny specifically that C. Nelson made the statements attributed to him by Owen and Glennis Elmore. We find that C. Nelson made the statements assigned to him by them.

On the basis of the foregoing evidence, we find that the respondent by requiring its employees to submit to questioning with respect to their union affiliation and activity, by threatening to discharge employees who joined the Union, by threatening to shut down the plant if the Union obtained a substantial membership among the respondent's employees, and by the dissemination of statements in-

¹¹ Referring to an old employees' representation plan. The plan is more specifically dealt with in Section III, B, *infra*.

¹² J. W. Nelson, the respondent's president.

tended to discourage union activity, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. We find also that by Foreman Rochelle's warning to Jacob Studnicki and Doyle's statement to Wylie Parker, both of which are more fully set forth in Section III, D, *infra*, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

Shortly before about May 20, the Union requested the respondent to recognize it as a collective bargaining representative for its employees. In support of its request, the union representatives furnished the respondent with a list of the names of its members and stated that the respondent was free to verify the Union's claim. Accordingly, on or about May 20, Doyle with a list in his hand, accompanied by Foreman Simpson, passed through the plant and interrogated substantially all of the 48 employees whose names appeared on the list as to their preference between an outside and an inside union. When the poll was made the employees were told that they need make no answer if they so saw fit and that the answers they made would not prejudice them with the respondent. Since the union representatives furnished the respondent with its members' names and invited verification of its claim, thus apparently acquiescing in the method used in such verification, we find that the respondent, acting on such invitation under the circumstances here disclosed, did not interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed by Section 7 of the Act.

Although the complaint alleges that the respondent instituted and maintained a labor-spy system, the evidence does not support the allegation. We find, therefore, that the respondent has not instituted and maintained a labor-spy system.

B. Nelson Protective Association

During the period of the National Industrial Recovery Act there existed in the respondent's plant an employees' representation plan known as the Nelson Protective Association, herein called the N. P. A. Foreman Simpson acted as an N. P. A. representative. Little is shown in the record as to the structural organization or functioning of the N. P. A., except that the plan was short-lived due to employee indifference.

The record indicates that the respondent suggested the restoration of the N. P. A. at the time the Union actively sought to organize the employees. We have found above that at the March 17 meeting in the plant C. Nelson announced the respondent's position of unalter-

able opposition to the Union and stated, among other things, that he:

. . . still had the papers [of the N. P. A.] . . . could get them out and form the Union again.¹³

At the hearing C. Nelson asserted that he made no mention of a company union at the meeting, but admitted that after he and Doyle delivered talks, several employees, whom he failed to identify, manifested an interest in the N. P. A. to him; that Foreman Simpson informed C. Nelson that some employees desired a company-sponsored organization for musical activities; that he (C. Nelson) gave official approval to an employee organization for "social purposes" and granted permission for the election of a committee and the holding of the election in the plant. . . About 2 days after the March 17 meeting a plant-conducted election for committeemen was held. According to Glennis Elmore, the employees had been promised¹⁴ 30 minutes time in which to ballot; that when at about 11:45 in the forenoon no one had appeared to provide election facilities, Elmore applied to Doyle; that Doyle instructed Gallagher to obtain paper and distribute ballots to the employees. At the hearing Doyle stated that this incident did not occur. Gallagher, however, although he testified that he was unaware of the purpose for which the paper was to be used, admitted at the hearing that he distributed pieces of paper to the employees. Foreman Simpson allowed the employees 15 minutes' time in which to discuss potential candidates before casting their votes and stood by to observe the employees writing in their selections on blank pieces of paper. About 15 minutes were consumed for the conduct of the election. The regular lunch period extended from 12 to 12:30 p. m. Under these circumstances, and in view of C. Nelson's sponsorship of the election, we find that the incident, as testified to by Glennis Elmore, occurred.

Although the disposition of the cast ballots is not disclosed by the record, it appears that supervisory employees collected them from the employees. The results of the election were posted upon the plant bulletin board. Under the respondent's rules, no notices could be posted on the plant bulletin board without the consent of one of the Nelsons. Among the six committeemen elected there was one straw-

¹³ Shortly before the March 17 meeting, according to the testimony of Glennis Elmore, President J. L. Nelson accosted him on the street outside the plant, informed Elmore of the existence of rumors of union organization in the plant, belittled the benefits to be derived by employees from such an organization, praised the efficacy of an unaffiliated union, and advised the establishment of such an organization for the respondent's employees in the form of the old N. P. A. plan. The evidence indicates, however, that President Nelson was out of the city of St. Louis from about the first of the year to April 10, 1937. Since it is not clear from the record whether Elmore confused the name of the elder Nelson with that of his son, we do not give weight in our decision to this phase of Elmore's testimony.

¹⁴ By whom, the record does not disclose.

boss, Bujewski. At the March 17 meeting Doyle had suggested that the employees select all foremen for committeemen.

A day or two after the election, the committeemen, including Glennis Elmore, met with Doyle, and either the two Nelsons or C. Nelson, in the company office. Glennis Elmore testified as to what happened there in the following words:

The company's officers . . . promised to get out this here old contract¹⁵ and revive it . . . Mr. Doyle and Charles Nelson told us . . . that we werè the direct representatives of the men and if they desired anything it would be necessary to come to the committee for that.

In his testimony Doyle merely denied that he made any statement to the effect that "it would be necessary to come to the direct representatives." At the hearing C. Nelson limited himself to a denial that . . . "Glennis Elmore asked me to get out the old contract, there was none." We find that Doyle and C. Nelson made the above statements attributed to them by Glennis Elmore.

Subsequently at least two N. P. A. meetings were held in the plant with the knowledge of supervisory employees, one during working hours. At the first meeting in the plant cellar the committeemen reported that the old N. P. A. papers could not be located. A vote was taken to permit the employees to determine whether they should affiliate with an "outside" union or proceed with the "inside" form of organization. Fifty-six employees voted for an "outside" union, 26 for an "inside" union. Next afternoon, the committeemen met with Doyle, Simpson, and Rochelle and reported the results of the balloting. The respondent's officials objected to the election results on the ground that foremen were not permitted to vote. When Glennis Elmore expressed doubt to J. L. Nelson whether the committeemen could make the N. P. A. an effective organization, Nelson stated: "You go to the fellows and see that they are interested." This is not specifically denied.

A few days after the first meeting of the N. P. A., the employees again assembled in the carpenter shop to reconsider the affiliation vote. Simpson addressed the workers. According to the testimony of Glennis Elmore, Simpson, among other things, said:

. . . [you] fellows [have] automobiles, homes, . . . some . . . even expecting children . . . don't see how you can afford to have any trouble here . . . if we get this [outside] organization, we will probably get trouble; the best thing you can do is go ahead and go along . . . what a measly amount of money

¹⁵ Apparently Elmore used the word "contract" loosely to refer to the organic papers of the old N. P. A. plan.

[Emerson Electric employees] got for the time they had been out [on strike] . . . if some of [you] take it to the Labor Board . . . they work slow down there . . . it would possibly be a year before you would get a hearing . . . the best thing to do is to go along and have a little inside union, or not have any at all.

At the hearing Simpson, although denying that he advised the employees against joining an outside union, admitted that he attended the meeting and read a portion of the Wagner Act to the employees at their request. Glennis Elmore's testimony, furthermore, is corroborated by Edward Owen and by Louis McClure, the chairman of the N. P. A. committeemen. We find that Simpson addressed the employees in substantially the language assigned to him above by Glennis Elmore. At the conclusion of Simpson's talk, another ballot was taken. This time the employees were afforded three choices, there being added an "or neither" alternative. The second ballot resulted, however, in the largest number of votes being cast in favor of affiliation with an "outside" union. Thereafter no activity on the part of the N. P. A. is shown in the record, except that when the Union met with the respondent in a bargaining conference on June 14, 1937, the respondent invited N. P. A. committeemen to attend.

As we hereinafter find in Section III, C, on March 29, 1937, the respondent discharged four employees, Ervin Barnes, Elzie Fleeman, Elmer Wuest, and Paul Price, for the reason, among others, that they failed or refused to utilize the N. P. A. as their representative for the presentation of their grievances to the respondent.

We find that the respondent, by the acts and conduct set forth above, has dominated and interfered with the formation and administration of the N. P. A. and contributed support to it, and thereby has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of mutual aid and protection as guaranteed in Section 7 of the Act.

C. The discriminatory discharges of Fleeman, Wuest, Price, and Ervin Barnes

The complaint alleges that the respondent discharged Fleeman, Wuest, Price, and Ervin Barnes because of their union activities. In defense the respondent contends that the four named employees voluntarily severed their employment in connection with a dispute which arose over wage rates. We now examine the circumstances surrounding their separation from the respondent's pay roll.

On Monday, March 29, 1937, after the lunch period, a group of about 15 to 18 newly recruited general laborers, instead of returning

to their work, waited outside Doyle's office until he returned from lunch. Doyle returned to the plant shortly before 1 p. m. The group, the four employees named above acting as spokesmen, complained to Doyle that the pay checks which they received on Saturday failed to reflect a 5-cent per hour increase which he had promised at the March 17 meeting. Doyle told the men that the rate increase which the respondent had granted applied to employees who were in service with the respondent for a period of 90 days only, and that he had so announced at the March 17 meeting. Doyle informed them that they could return to work upon the basis of their existing wage rates and questioned each of the men as to whether he was satisfied with such an arrangement.

There is sharp conflict in the evidence as to whether all the men thereupon returned to work or whether the four individuals involved in the complaint remained in Doyle's office after the others left, insisting upon the 5-cent increase. At the hearing Doyle claimed, and his testimony in this respect in substance is supported by that of other supervisory employees, that the four men stayed in Doyle's office after the others withdrew and took the position that they would not work until they secured the wage increase; that thereupon Doyle informed them they would be required to "quit" unless they resumed work; and when they chose not to do so, that Doyle ordered the company auditor to prepare pay checks for them.

Of the four, only Fleeman and Barnes testified. Their testimony was in agreement that the four accompanied the other men when they withdrew from Doyle's office; that Fleeman and Barnes returned to their work; and that about 20 minutes after resuming their duties Doyle summoned them and assembled the four in his office. Other employees testified that they observed all four actively engaged in work after the lunch period. In addition, Ault Helvey, a cabinet helper, saw all four emerge with the others from Doyle's office and noticed the four return and enter Doyle's office about 15 or 20 minutes thereafter. According to Barnes, Doyle said: "I will have to turn you fellows out. I find that you are agitators, having these boys walking out here." Fleeman testified that Doyle announced he was "going to discharge us because we are trying to agitate a strike and didn't take it to the company union." During the conference, Fleeman further disclosed, Doyle called in Chairman McClure of the N. P. A., and, Fleeman heard McClure reply after Doyle had called him aside: ". . . the men had not asked [me] anything about it."

Later that day, the N. P. A. committeemen, except Glennis Elmore, met with Doyle and C. Nelson. Harry Elmore, a committeeman, testified that Doyle told the committee ". . . the four men should have come to the committee to discuss their troubles and that the

committee should have come to him . . . he said the reason he was firing them was because he wanted us to mean something around there, that he wanted us, the men, to believe in the Committee." Doyle denied this testimony. Neither C. Nelson nor Committeemen Bujewski, A. Jeffrey, L. Kiselewski,¹⁶ nor L. McClure testified with respect to this aspect of the case, notwithstanding all, except McClure, appeared as witnesses for the respondent. All were in the respondent's employ at the time of the hearing. We do not, therefore, credit Doyle's denial, and find that Doyle made the above statements.

Upon the foregoing evidence, particularly the statements made by Doyle and the fact that the presence of all four men at work after the lunch period is inconsistent with the contention that they quit, we are convinced and find that Fleeman, Wuest, Price, and Ervin Barnes did not voluntarily leave their employment, but rather that the respondent, in an effort to force upon its employees the N. P. A. as an instrument for the purposes of collective bargaining, discharged the above-named four persons because they failed to utilize the N. P. A. to represent them in their labor relations with the respondent and engaged as leaders in concerted activities among themselves, and with other employees, to press the grievance¹⁷ concerning their wage rates. The respondent, by discharging them, discriminated in regard to their hire and tenure of employment, to encourage membership in the N. P. A. and discourage it in the Union, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

On March 31 Ervin Barnes secured another job with a firm in Indianapolis, Indiana, where he worked, earning \$18.40 a week, until May 29, 1937, when he was laid off on account of slack work. While employed by the respondent, his earnings averaged \$15.75 a week. During 1938 Barnes worked intermittently for a total period of 2 months as an automobile mechanic at which he earned approximately \$10 a week. In April 1938 he rented a farm on a share-crop basis and at the time of the hearing he was engaged as a tenant farmer.

Elzie Fleeman secured another job on May 1 in St. Louis on a piece-work basis, earning approximately \$20 a week, which is about the same amount he was earning on an hourly basis with the respondent at the time of his discharge. Fleeman quit his new job on June 1, 1937, when he went to Colorado where he worked on a ranch for his board for a period of 6 weeks. Since August 1937 and until the time of the hearing he has been unemployed.

¹⁶ Also referred to in the record as Jisselewski.

¹⁷ It is unnecessary in this Decision to express any opinion as to the merits of the grievance.

Neither Wuest nor Price testified at the hearing and the record does not contain any information as to their employment history subsequent to their discharge.

D. The discharge of Ernest Barnes, the strike, and the alleged discriminatory refusal to reinstate the strikers

During April and May 1937, union representatives met with the respondent's officers on several occasions, apparently without making substantial progress in their bargaining negotiations. They arranged a conference to be held Monday, June 14, at 2 o'clock. Alarmed by the respondent's discharge of six employees,¹⁸ the employees grew restive as they observed the respondent's peak season drawing to a close. They urged the union representatives to hasten the progress of the negotiations. On June 10, Fred W. Myers, the business representative of the United Association of Steam, Gas & Refrigeration Fitters, Auxiliary Local 562, telephoned President Nelson and secured his promise not to discharge any more employees pending the conference, which they agreed to advance to 10 o'clock, the morning of the 14th.

Barnes was discharged on Saturday, June 12. There is conflict in the record with respect to the circumstances surrounding his dismissal. Barnes, who worked in the coil room, testified that Saturday morning, upon completing the work he had on hand, he asked his supervisor, Hartwick, a subforeman, for a new assignment; that Hartwick instructed Barnes to help a group of workers who were building tanks; that Barnes approached one of the men, Charles LaGrasso, and proceeded to help him in the work he was doing; that LaGrasso protested, saying he had work enough to last only until plant closing time; and that, as Barnes was engaged in explaining to LaGrasso that Hartwick had assigned him to assist in tank building, Hartwick came up, and said: "You cut this out, shooting the bull"; and thereupon escorted Barnes to Doyle's office. At the hearing Hartwick claimed that when Barnes asked for more work, he instructed him to solder some fittings; that Hartwick then left the department; that when he returned he found Barnes about 20 feet from his work bench and discovered that he had not done the work assigned to him; and that when Hartwick told Barnes that the respondent needed the fittings and directed him to resume work, Barnes applied an epithet to Hartwick. While Harry Elmore, who worked in the coil room near Barnes, corroborated Barnes' version, the respondent failed to call LaGrasso to testify, although at the time

¹⁸ Fleeman, Price, Wuest, Ervin Barnes, Leo Helvey, and Henry DuPont.

of the hearing he was in the respondent's employ. We do not credit Hartwick's testimony and find that the incident occurred substantially as testified to by Barnes and Elmore.

After Hartwick reported the affair to Doyle and complained with respect to repeated acts of idling by Barnes, the superintendent summoned Simpson, Hartwick's superior, and inquired whether he had any complaints about Barnes. Simpson informed Doyle that Barnes had left his department and descended to the first floor of the plant, and that, despite warnings on three occasions, Barnes maintained an indifferent attitude. At the hearing Barnes denied that he had ever been warned by any supervisor, but admitted going to the men's room located on the main floor of the plant. Although the respondent maintained toilet facilities on the second floor where Barnes worked, considerable evidence was introduced to indicate that the second-floor room was unfit for use.

Upon hearing Simpson's report, Doyle called the respondent's timekeeper and instructed him to give Barnes "his time in full."

On his way from Doyle's office to the coil room, Barnes encountered Hartwick. Without a word passing between them, Barnes felled Hartwick with a forceful punch on the mouth, splitting his lip. Employees attracted to the scene intervened to prevent any further fighting. Word of Barnes' discharge soon reached his fellow employees. In protest, a substantial number walked out of the plant, and lingered on the outside. Superintendent Doyle talked to the strikers and reached some sort of understanding with them. There is conflict in the evidence as to the terms under which the employees agreed with Doyle to return Monday to work. According to the testimony of strikers, Doyle promised to reinstate Barnes if the men returned to work. Doyle asserted at the hearing that he merely urged the strikers to resume work, assuring them that the respondent would consider all matters in dispute with the Union at the conference set for Monday morning. In any event, Doyle and the strikers agreed that since the hour approached closing time, the men should not report for work until Monday morning.

Monday morning, when Barnes, with a bandaged hand, approached the time clock in the plant to report for work, he was stopped by Doyle. Doyle and J. L. Nelson informed Barnes that he had been discharged for insubordination on Saturday, that he had thereafter committed a serious offense in striking Hartwick, and that, in any event, the condition of his hand, caused by the blow he gave Hartwick, would not permit his working.

When word reached the employees, about 8 o'clock that morning, that Barnes had been refused reinstatement, another walk-out ensued. Substantially the same men who had struck on Saturday

gathered outside the plant. The union organizers, Myers and Walter Gablein, a representative of the Carpenters' District Council of St. Louis, were surprised to find a strike in progress when they arrived at the plant for the scheduled bargaining conference. The parties devoted the morning to a discussion of Barnes' discharge. Further negotiations that afternoon, however, were halted when President Nelson suffered a physical breakdown, necessitating his removal to a hospital during the lunch recess. Since the remaining company officials felt unequal to the task of carrying on negotiations, the conference adjourned.

That afternoon the Union established a picket line. Some employees who had not joined the walk-out failed to report to work Monday afternoon. Only 19 ordinary employees came to work on Tuesday. The plant shut down Tuesday afternoon, according to the testimony of the respondent's officers, because of a fear of violence to the workers. The plant remained closed until June 24.

During the 8- or 9-day shut-down period the supervisory personnel, office force, and salesmen worked at production. None of the ordinary employees worked between June 15 and June 24.

Toward the latter part of the shut-down period some employees telephoned officials of the respondent, both before and after the respondent decided to resume plant operations, and asked when they could return to work. The record does not disclose what the employees were told prior to the making of the respondent's decision to reopen the plant. The respondent, however, maintained a list of such persons on file. Shortly before the plant reopened, H. F. Meyer,¹⁹ a non-striker, who worked as an assemblyman in the plant, called upon Doyle and C. Nelson. He told them that the employees wanted to return to work and suggested that he be allowed to "round up the men" to return to work. In an automobile provided by one of the ordinary employees who paid for the gas, Meyer, accompanied by one or two ordinary employees, visited the workers. He told them that he had a definite arrangement with the respondent calling for the reopening of the plant, and instructed them to be at a designated street corner located about 2 blocks from the plant on the morning of June 24. Meyer refrained from communicating with the strikers. That morning a group of about 32 employees met at the appointed place, marched to the plant in a body, and returned to work. Five strikers joined them when they entered the plant and also resumed work.

Myers, the union representative, met with Doyle and C. Nelson on several occasions during the shut-down period, apparently, how-

¹⁹ After the strike Meyer organized Nelson's Employees' Council which is discussed in Section III, E, *infra*.

ever, without making substantial progress in their negotiations. The record fails to reveal the exact nature of their dealings. There were two conferences, however, of particular significance. One was held on June 23, and the other, on June 24 or 25. On June 23 Doyle and C. Nelson informed Myers that the respondent would enter negotiations looking toward an agreement if the employees returned to work. They emphasized, however, that all employees could not immediately be put back to work since company orders had been canceled²⁰ and the business season in the respondent's industry was nearing its end, and told Myers that the respondent would rehire those employees who applied promptly. Myers promised the respondent's officials to use his offices to persuade the strikers to return to work. There is testimony also in the record, which, if believed, indicates that the respondent announced to Myers prior to the reopening of the plant that it planned to limit the number of strikers to be reinstated to six specifically named key employees. One of the strikers who filed the charges in this proceeding, Wylie Parker, testified that about 2 or 3 days before June 24, Myers told a meeting of strikers that the respondent would reinstate six men. He further testified that Myers refused to name them, and instructed all strikers to apply for work on the morning of June 24 to allow selection by the respondent. Since none of the other strikers or Myers corroborated Parker's testimony, and in view of the fact that the testimony of Doyle and C. Nelson indicates that the respondent first designated the six employees for reemployment after the plant had resumed operations, we do not credit Parker's statement.

On June 24 or 25, but, in any event, after the group of approximately 37 employees had returned to work, Doyle told Myers that the respondent could use six named keymen and requested Myers to notify them to return to work. Instead, to avoid the appearance of favoritism, Myers notified the entire group to apply for work. Doyle selected six from a list supplied to him by Myers for reinstatement and announced to the strikers who assembled outside the plant that day: "That is all. Let you know when we need you." The respondent agreed with Myers to allow the remaining strikers to share work on a part-time basis with those employed. There is disagreement, however, as to whether Myers undertook to furnish the respondent with a list of those strikers who were willing to work part time. At any rate, Myers did not deliver such a list to the respondent and the plan was never put into effect. Thereafter, no strikers, except Gordon Hampton who was later released and whose case we will discuss in Section III, F, and Dennis Elmore, who was

²⁰ At the hearing President Nelson testified that the respondent lost from \$50,000 to \$75,000 in canceled orders as the result of the strike.

later discharged and whose case we will discuss in Section III, G, obtained reinstatement.

Conclusions with respect to the discharge of Ernest Barnes, the strike, and the alleged discriminatory refusal to reinstate the strikers

Although the record hints that the respondent sought to eliminate Ernest Barnes from its pay roll, it affords no basis to warrant the conclusion that his union membership or activity motivated the respondent in discharging him. Harry Elmore asserted at the hearing that on the morning of Barnes' discharge he was told by Fred Porta, a fellow employee, that Doyle had instructed Hartwick "to get that big —— before noon." Elmore further testified that he understood the deleted epithet to refer to Barnes because he was the tallest person in his department. Neither Doyle nor Hartwick testified with respect to this aspect of the case. Porta, however, denied at the hearing that he heard Doyle so direct Hartwick, and negated the occurrence of the supposed conversation with Elmore. We do not credit Elmore's testimony with respect to the incident alleged above. Moreover, although the respondent knew of Barnes' allegiance to the Union, since he was no more active than fellow employees who like him occupied the position of known ordinary rank and file union members, we see no reason why the respondent should have selected Barnes as an example to discourage its employees from participation in the Union. Rather we believe that Barnes' discharge is traceable to the dispute with his supervisor with respect to his performance at work, and that the respondent refused to reinstate him for such cause and because of his violent attack upon Hartwick and his physical incapacity for work on June 14. We find, therefore, that the respondent did not discharge Ernest Barnes, or refuse to reinstate him, because of his union activity.

We are also of the opinion that the strike resulted in no way from the respondent's unfair labor practices, which we have found. The evidence in the record stands undisputed that the employees walked out of the respondent's plant on June 12 because of Barnes' discharge in asserted violation of the respondent's promise not to dismiss any employees pending the June 14 conference with the Union. It is clear also that the employees struck again on June 14 because of the respondent's refusal to reinstate Barnes that day in the face of the strikers' understanding that the respondent would do so if they returned to work.²¹ Since we have found that Barnes'

²¹ Even if the respondent had bound itself legally to withhold discharging employees for the stipulated period, which question we find unnecessary to decide, a breach of such an agreement, without more, does not constitute an unfair labor practice. Cf. *Matter of Williams Coal Company and United Mine Workers of America*, District No. 23, and companion cases, 11 N. L. R. B. 579.

discharge and his failure to obtain reinstatement were not discriminatory, neither the walk-out called in protest against his dismissal nor the strike in response to the respondent's failure to rehire him can be attributed to any unfair labor practice on the part of the respondent. Accordingly, we so find.

We now consider whether the respondent discriminatorily refused reinstatement to the strikers upon the resumption of plant operations. Certain evidence in the record tends to indicate that discrimination was practiced. Approximately two-thirds of the strikers failed to get their jobs back, while the non-strikers, almost without exception, were returned to work. Furthermore, supervisory employees made statements to certain employees to discourage the spread of the strike and to cause its abandonment. On June 12 or 14, Foreman Rochelle approached Jacob Studnicki,²² a carpenter:

Studi, what are you going to do? You going for the strike or are you going to stay here? If you stay here the company give you union wages. If you are not going to stay, you are out of luck, you lose your job. That strike is not legal. You are going to lose this strike anyway. If you lose the strike, you lose the job.

Studnicki later joined the pickets. When he applied for work some weeks after the plant resumed normal operations, he was directed to remove his tools from the factory by Rochelle. Sometime during the strike, apparently on June 24 or 25, Wylie Parker applied to Doyle for reinstatement. In the presence of C. Nelson and Gallagher, Doyle promised Parker a job if he stayed away from "those trouble makers across the street," referring to the pickets. This Doyle failed to deny specifically at the hearing. Parker, however, returned to the picket line. When he applied to Doyle again, later in June, Parker was informed that no work was available.

An analysis of the record, however, leads us to believe that the evidence is insufficient to warrant the conclusion that the respondent in fact discriminated against the strikers in restaffing its force after the shut-down. The respondent's business is seasonal, customarily rising gradually in volume in January of each year and running its course to July when it declines sharply. The reopening of the plant thus took place toward the end of the peak season. Furthermore, customer cancelation of orders because of the strike resulted in a substantial diminution of the respondent's business. Moreover, the respondent had departed from its customary mode of operation in hiring approximately 30 new general laborers for the 1937 season as

²² Also referred to in the record as Nick Studdy and J. Studi.

"jockeys." Whereas in the past the duties of the cabinetmakers, carpenters, assemblers, and coil-room workers included the task of obtaining their own materials at different places in the plant, the respondent employed the "jockeys" to carry materials to the benches of the above-mentioned production workers in order to accelerate output. At the end of the peak season the respondent could readily dispense with the services of the "jockeys" without impairing plant efficiency. Included among the strikers who failed to secure reinstatement were approximately 10 general laborers²³ who fell within this category.²⁴

On its June 10 pay roll, the last preceding the outbreak of the strike, the respondent carried 73 active,²⁵ ordinary employees. When the plant reopened on June 24, 37 employees reported for work, including 5 strikers. The record does not disclose any effort on the part of the respondent to prevent the strikers from returning to work. On the contrary, not only were the five strikers allowed to punch the time clock, but the respondent informed the Union that it stood ready to rehire those strikers who promptly signified their desire to work. Only five responded. Although, between June 24 and the pay-roll week of July 8, the respondent recalled six non-union employees and Robert McGuire, under circumstances which are not disclosed in the record, it also added seven strikers to its force. Of the seven, two were subsequently released under circumstances set forth in Section III, F and G, *infra*. Except for two men who were each hired for 2 days to do special soldering work, the respondent hired no new employees during the period from June 24 to the time of the hearing. Although a group of strikers assembled outside the plant the day of its reopening, their failure to obtain reinstatement is attributable to their omission to request it when jobs were available, and the lack of work in the respondent's plant after the strike. We find, therefore, that the respondent has not discriminatorily refused to reinstate the strikers named in the complaint because of their union activities. Accordingly, we will dismiss that allegation of the complaint together with the allegations of the complaint with respect to Ernest Barnes.

²³ The complaint contains, for reasons undisclosed in the record, no allegations with respect to 1 of the 10 general laborers.

²⁴ The employment of approximately 18 of the 30 general laborers above who were hired by the respondent during the 1937 season terminated prior to the outbreak of the strike. The respondent rehired after the strike only two general laborers, one a union employee. P. Fleming, the non-union general laborer, left the respondent's employment on July 22, 1937, under circumstances which are not revealed in the record. The separation of Gordon Hampton, the union man, from the respondent's employment is treated in Section III, F, *infra*.

²⁵ In addition, Robert McGuire, a solderer, was on sick leave.

E. Nelson's Employees' Council ²⁶

About a week after the plant reopened, a notice appeared on the respondent's bulletin board in the plant announcing an employees' meeting to be presided over by H. F. Meyer, who led the back-to-work movement after the strike, and advising the employees of the importance of their attendance. Meyer told the men who returned to work after the shut-down: "We were to organize to unite the boys who were back." All employees, including foremen, attended the meeting which was held after working hours. Meyer addressed the workers, urging the formation of a "social club" with a 25 cents a month dues plan. Announcement was also made, by whom it does not appear, that any employee who presented a money-saving or other valuable idea to the respondent would be awarded a prize of \$5. Subsequently the N. E. C. held another meeting where refreshments were served and Foreman Simpson entertained with a musical instrument. Light, however, is shed upon the true function of the N. E. C. by its constitution which sets up an employee-representation plan with elected representatives to act as the Council. It provides, *inter alia*:

The purpose of this plan is the development of the spirit of cooperation and mutual understanding by *establishing an orderly method by which employees may present to the Company their views and recommendations on all questions of company policy with particular reference to health, safety, recreation, education, and other similar matters of mutual interest.* [Italics supplied.]

The constitution invests the Council with the duty to make to the respondent recommendations with respect to the matters referred to in the purpose clause. In our opinion the function of the N. E. C. as revealed in the purpose clause of its constitution encompasses those of a labor organization. Accordingly, we find that the N. E. C. is a labor organization.

Under the above circumstances, and especially in view of the respondent's efforts to revive the old N. P. A. and its domination of the reorganized N. P. A., Meyer's leadership in the formation of the N. E. C., the posting of the notice calling the N. E. C. organization meeting on the respondent's bulletin board which, under company rules, required company consent, and the attendance of supervisory members of the respondent's staff at N. E. C. meetings, we find that the respondent has dominated and interfered with the formation and administration of the N. E. C. and contributed support

²⁶ The Constitution of the N. E. C. designates the full name of the organization as "Nelson's Employees' Council of St. Louis, Missouri."

to it, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

F. The lay-off or discharge of Gordon Hampton

Gordon Hampton, a helper in the cabinet-assembly department, was first employed by the respondent on March 16, 1937. A union member, he told Doyle in May of his preference for an "outside" labor organization, and went out on strike in June. He resumed work on July 3 after Dennis Elmore, acting on Foreman Simpson's instructions, delivered to Hampton a message to the effect that the respondent wished him to return. On Friday, August 6, 1937, not finding his time card in the rack, Hampton applied to the respondent's timekeeper and was handed his pay with a letter containing a notice of lay-off ascribed to the seasonal decline in business.

At the time of the notice, the respondent employed approximately nine employees who were doing work comparable to that of Hampton. These the respondent retained in its service. Of the nine, seven were non-strikers. The two strikers were persons who abandoned the strike and voluntarily returned to work, one when the plant reopened, and the other sometime thereafter. Hampton had seniority over four non-strikers, ranging from 1 week in the case of three non-strikers to 2 weeks in the case of one. Both strikers were first employed before Hampton. The respondent did not follow a policy of strict seniority in its lay-offs, although the length of an employee's service with the respondent was one of the factors considered in the selection of employees to be laid off.

Even if, contrary to our finding, the respondent did follow a policy of strict seniority, in view of Hampton's slight seniority and his relative inactivity as a union member, we disagree with the Trial Examiner's conclusion that the respondent discriminated against Hampton because of his union membership or activity, and find to the contrary. We will dismiss the allegations of the complaint with respect to Gordon Hampton.

G. The discharge of Dennis Elmore

Dennis Elmore, a coil-room worker, was first employed in 1930 and worked intermittently until August 1937. Elmore belonged to the Union, answered that he preferred an "outside" union when polled by Doyle in May 1937, and went out on strike in June. Sometime between June 24 and July 3, the respondent recalled him to work under circumstances not shown in the record. On the evening of August 14, Doyle summoned Elmore to the superintendent's office and informed him that the respondent had been served with a gar-

nishment summons with respect to his wages and that "the company did not take garnishments." Doyle rejected Elmore's offer to pay in installments the judgment upon which the garnishment was based, saying "it would take too long," and told him that he was discharged. The amount of the original claim against Elmore was \$40, which, with 7 years' interest plus court costs, amounted to approximately \$90. Elmore earned about \$20 to \$25 a week. After his discharge, at Elmore's request, C. Nelson attempted to negotiate a settlement of the claim with the judgment creditor. The creditor, however, refused to compromise the judgment by acceptance of a substantially reduced amount in payment of the claim. At the hearing Elmore claimed that the respondent discriminated against him in refusing to loan him a sum of money to meet the financial obligation referred to above in view of the respondent's practice in the past of advancing money to employees for various purposes in similar situations. It appears, however, that Elmore's suggestion of repaying the proposed loan by the deduction of \$15 each week from the amount of his pay check would, as C. Nelson pointed out to Elmore, leave an insufficient sum to provide bare sustenance for himself. At any rate, the respondent planned to close its books within the 30-day period which followed Elmore's application and not make new loans thereafter due to its financial condition.

We find that the respondent has not discharged Dennis Elmore because of his union membership or activity, and, accordingly, we will dismiss the allegations of the complaint with respect to him.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

The respondent will be required to cease and desist from the unfair labor practices described above. We shall order the respondent henceforth to refuse to accord the Nelson's Employees' Council, or the Nelson's Protective Association, if it ever returns to an active existence under its old name and form or any other name and form, any recognition as a collective bargaining agency. By reason of the respondent's domination and interference, neither the N. P. A. nor

the N. E. C. can serve the respondent's employees as genuine bargaining representatives. Their continued, actual or potential, presence in the plant constitutes a barrier to collective bargaining through freely chosen representatives of the employees. We shall, accordingly, require the respondent to completely disestablish the N. P. A., to which it has accorded recognition, as the representative of any of its employees for the purposes of collective bargaining.

As we have found that by discharging Elzie Fleeman, Ervin Barnes, Elmer Wuest, and Paul Price, the respondent has discriminated in regard to their hire and tenure of employment, we shall order the respondent to offer each of them immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges, and to make each whole for any loss of pay he may have suffered by reason of his discharge, by payment to each of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings²⁷ during such period.

Since we have found that the strikes were not caused by the respondent's unfair labor practices and that the respondent did not discriminatorily refuse to reinstate the strikers named in the complaint, we will not order their reinstatement. The respondent maintained throughout the hearing that it would have put all strikers to work upon the reopening of the plant had work been available for them and Superintendent Doyle testified that the respondent maintained thereafter a preferential list of those strikers, who were not on its pay roll, for employment when work should become available. In view of the respondent's unfair labor practices set forth in Section III above, however, there is serious danger that the respondent will not reemploy those strikers even if their former or substantially equivalent positions become available. In order to effectuate the policies of the Act, we will require the respondent to maintain upon a preferential list the names of the strikers listed in the complaint²⁸

²⁷ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2500*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects.

²⁸ Except Walter Winston, who died prior to the hearing, Ernest Barnes, whose case is treated in Section III, D, *supra*, and Adam Weston, who was not identified in the record.

for reinstatement under its usual practice²⁹ in the event employment should become available for them.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. United Association of Steam, Gas & Refrigeration Fitters, Auxiliary Local No. 562, Carpenters' District Council, St. Louis, Missouri, Nelson's Protective Association, and Nelson's Employees' Council are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Nelson's Protective Association and Nelson's Employees' Council and contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Elzie Fleeman, Ervin Barnes, Elmer Wuest, and Paul Price, thereby encouraging membership in Nelson's Protective Association and discouraging membership in the United Association of Steam, Gas & Refrigeration Fitters, Local No. 562 and Carpenters' District Council, St. Louis, Missouri, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the respondent has engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by refusing to reinstate the strikers named in the complaint and by discharging Ernest Barnes, Gordon Hampton, and Dennis Elmore.

²⁹ *Matter of Link Belt Company and Lodge 1604 of Amalgamated Association of Iron, Steel and Tin Workers of North America, through the Steel Workers Organizing Committee affiliated with the Committee for Industrial Organization*, 12 N. L. R. B. 854; *Matter of American Numbering Machine Company and International Association of Machinists, District #15*, 10 N. L. R. B. 536; *Matter of American Manufacturing Concern and Local No. 6, Organized Furniture Workers*, 7 N. L. R. B. 753; *Matter of Benjamin Levine, doing business under the name and style of Estelite Pictures Company and International Brotherhood of Electrical Workers, Local Union No. 348*, 6 N. L. R. B. 400.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, C. Nelson Manufacturing Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Nelson's Protective Association, Nelson's Employees' Council, or with the formation or administration of any other labor organization of its employees, and from contributing support to Nelson's Protective Association, Nelson's Employees' Council, or to any other labor organization of its employees;

(b) Discouraging membership in United Association of Steam, Gas & Refrigeration Fitters, Auxiliary Local No. 562, Carpenters' District Council, St. Louis, Missouri, or any other labor organization of its employees, or encouraging membership in Nelson's Protective Association or Nelson's Employees' Council, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Nelson's Protective Association as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish said Nelson's Protective Association as such representative;

(b) Refuse to accord recognition to Nelson's Employees' Council as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

(c) Offer to Elzie Fleeman, Elmer Wuest, Ervin Barnes, and Paul Price immediate and full reinstatement to their former or substan-

tially equivalent positions, without prejudice to their seniority or other rights and privileges;

(d) Make whole said Elzie Fleeman, Elmer Wuest, Ervin Barnes, and Paul Price for any loss of pay they may have suffered by reason of their discharge, by payment to each of them respectively of a sum of money equal to the amount which he would normally have earned as wages during the period from the date of his discharge to the date of said offer of reinstatement, less his net earnings³⁰ during said period; deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Include Everet Joyce, Wylie Parker, Roy Riggs, A. H. (Larry) Cranwell, Edw. Owens, Otis Faddis, Edgar Pratt, Tony Hammor, Cecil Sumpter, Jacob Studnicki, Glennis Elmore, Stanley Tritley, Harry Semon, Harry Elmore, Ault Helvey, Carl Barnes, Cecil Like, Hoyt Like, and Gordon Hampton upon a preferential list for reinstatement in accordance with its usual practice whenever employment becomes available for any or all of them;

(f) Immediately post notices in conspicuous places throughout its plant and maintain such notices for a period of at least sixty (60) consecutive days, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order;

(g) Notify the Regional Director for the Fourteenth Region in writing, within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, in so far as it alleges that, by failing and refusing to reinstate the employees named in the complaint who participated in the strike, by engaging in espionage, and, by discharging and thereafter refusing to employ Ernest Barnes, Gordon Hampton, and Dennis Elmore, the respondent has engaged in unfair labor practices within the mean of the Act, be, and it hereby is, dismissed.

AND IT IS FURTHER ORDERED that the complaint, in so far as it alleges that, by discharging and thereafter refusing to employ Lee Helvey and Henry DuPont, the respondent has engaged in unfair labor practices within the meaning of the Act, be, and it is hereby is, dismissed without prejudice.

³⁰ See footnote 27, *supra*.